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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/750,381	12/30/2003	Matthew T. Fitton	20,091	8953
23556	7590	08/09/2006	EXAMINER	
KIMBERLY-CLARK WORLDWIDE, INC. 401 NORTH LAKE STREET NEENAH, WI 54956			HAND, MELANIE JO	
			ART UNIT	PAPER NUMBER
			3761	

DATE MAILED: 08/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/750,381	FITTON, MATTHEW T.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Melanie J. Hand	3761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 03 May 2006.

2a)  This action is FINAL.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-42 is/are pending in the application.  
4a) Of the above claim(s) 3,5-12,19-30,33-35 and 38-41 is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1,2,4,13-18,31,32,36,37 and 42 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 30 December 2003 is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date see *Other*.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_ .  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: *See Continuation Sheet*.

Continuation of Attachment(s) 6). Other: IDSs: 5/6/04,6/14/04,7/2/04,8/10/04,10/11/04,11/26/04,12/9/04,9/9/05.

**DETAILED ACTION**

***Election/Restrictions***

Claims 3, 5-2, 19-30, 33 and 38-41 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention or species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on May 3, 2006.

Applicant's election with traverse of Group I, species 3 in the reply filed on May 3, 2006 is acknowledged. The traversal is on the ground(s) that species 2 and 3 are operable together and overlap in scope. This is not found persuasive because species 2 claims at least one posterior strap that increases in width from the absorbent composite to the back waist region, while species 3 claims at least one posterior strap with no change in width set forth and at least one anterior strap. These species do not overlap in scope.

The requirement is still deemed proper and is therefore made FINAL.

***Claim Objections***

Claims 1, 2, 4, 13-18, 36 and 37 are objected to because of the following informalities: the claim status identifiers for these claims should not be "withdrawn". In accordance with Examiner's decision to examine these claims as being directed to an elected species, the claim status identifiers should read "original" or "previously presented". Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claim 31 is rejected under 35 U.S.C. 102(e) as being anticipated by Mortell et al (U.S. Patent Application Publication No. 2004/0107481).

With respect to **Claim 31**: Mortell teaches a garment shell 64 including a front panel 22 defining a front waist region 38, a back panel 24 defining a back waist region 39 and an inner absorbent assembly. The front waist region and back waist region are connected via seams to define a waist opening and at least one leg opening. Garment shell 64 has waist elastic member 58 (elasticized shell waistband) adapted to encircle the wearer and said shell defines a body-side surface and an outward surface. The inner absorbent assembly comprises an absorbent composite 60 defining a front region and a back region. Mortell teaches that the absorbent structure 60 can be in various forms, e.g. in the form of a training pant, thus teaching an elastic support waistband defining a front section and a back waist section. The absorbent structure front end (and thus the elasticized support waistband) is attached (i.e. connected) to the garment shell at front waist edge 38 of front region 22 and the structure's back end is attached back waist edge 39 by any suitable means known in the art, e.g. at least one posterior support strap that would connect composite 60 to back waist edge 39 as taught by Mortell.

With respect to **Claim 42**: Mortell teaches crotch region 26 interconnecting front panel 22 and back panel 24 to define two leg openings.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1, 2, 4, 13-18, 36, 37 and 42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mortell et al (U.S. Patent Application Publication No. 2004/0107481) in view of Scovel (U.S. Patent Application Publication No. 2002/0177825).

With respect to **Claim 1**: Mortell teaches a garment shell 64 including a front panel 22 defining a front waist region 38, a back panel 24 defining a back waist region 39 and an inner absorbent assembly. The front waist region and back waist region are connected via seams to define a waist opening and at least one leg opening. Garment shell 64 has waist elastic member 58 (elasticized shell waistband) adapted to encircle the wearer and said shell defines a body-side surface and an outward surface. The inner absorbent assembly comprises an absorbent composite 60 defining a front region and a back region. Mortell teaches that the absorbent structure 60 can be in various forms, e.g. in the form of a training pant, thus teaching an elastic support waistband defining a front section and a back waist section. The absorbent structure front end (and thus the elasticized support waistband) is attached (i.e. connected) to the garment shell at front waist edge 38 of front region 22 and the structure's back end is attached back waist edge 39 by any suitable means known in the art, e.g. straps. Mortell does not explicitly teach at least one posterior strap connecting the elastic support waistband to the absorbent structure, as they are unitary.

Scovel teaches a disposable incontinence device comprising a disposable urinary bag having absorbent material 34 therein that is held in place to absorb excreted urine. The bag is fully capable of being worn inside a garment shell. The bag is held in place by least one posterior leg strap 16 that connects said bag (absorbent composite) to an elastic support waistband 14. This strap configuration

holds the bag (absorbent composite) in place, preventing sliding or chafing, therefore it would be obvious to one of ordinary skill in the art to provide at least one posterior leg strap to connect an elasticized support waistband of absorbent composite 60 to the composite taught by Mortell in place to ensure proper function and prevent slippage as taught by Scovel.

With respect to **Claim 2**: Mortell teaches that garment shell 64 has an elastic shell waistband defining a shell waistband edge (waist edges 38 and 39, collectively) and an absorbent composite structure 60 having an elastic support waistband defining a support waistband edge. Since Mortell teaches that the elastic support waistband of absorbent composite structure 60 (i.e. the absorbent structure's front and back edges) is attached at waist edges 38 and 39, the shell waistband and support waistband are coterminous.

With respect to **Claims 4,32**: Mortell does not teach posterior straps. As can be seen in Fig. 2, Scovel teaches that posterior leg straps 16 are narrower in width than bag 18. The strap configuration taught by Scovel holds the bag (absorbent composite) in place, preventing sliding or chafing and the leg straps are narrower to comfortably fit between the legs of the user, therefore it would be obvious to one of ordinary skill in the art to provide at least one posterior leg strap to connect an elasticized support waistband of absorbent composite 60 to the composite taught by Mortell in place to ensure proper function and prevent slippage as taught by Scovel.

With respect to **Claims 13,36**: Mortell does not teach at least one anterior strap connecting the elasticized support waistband to the absorbent structure 60. Scovel teaches front (anterior) straps 15 (i.e. at least one) that attach waistband 14 to bag 18. These additional straps together with posterior leg straps 16 provide additional assurance that the bag is secured in place, therefore it would be obvious to one of ordinary skill in the art to add at least one anterior strap connecting absorbent composite 60 taught by Mortell to its elastic support waistband as taught by Scovel.

With respect to **Claim 14**: Mortell does not teach anterior straps. As can be seen in Fig. 2 taught by Scovel, front straps 15 connect to the front region of bag 18. These additional straps together with posterior leg straps 16 provide additional assurance that the bag is secured in place, therefore it would be obvious to one of ordinary skill in the art to add at least one anterior strap connecting absorbent composite 60 taught by Mortell to its elastic support waistband as taught by Scovel.

With respect to **Claims 15,37**: Mortell does not teach at least one posterior strap. Scovel teaches posterior leg straps 16 but does not teach any particular material for such straps. It would be obvious to one of ordinary skill in the art to use an elastomeric material as such a material can stretch with movement and wear to fit varying sizes of users.

With respect to **Claim 16**: Mortell teaches crotch region 26 interconnecting the front and back panels to define two leg openings.

With respect to **Claim 17**: As can be seen in Fig. 3B taught by Mortell, absorbent structure 60 defines two side edges, each side edge extending between the front and back ends of said structure. As can be seen in Fig. 2A, the two side edges, front end and back end of composite 60 are urged upward generally toward the wearer to define an upwardly urged periphery of the absorbent composite.

With respect to **Claim 18**: The absorbent material in composite 60 is dispersed uniformly throughout, and the absorbent material therein provides at least 20% of the absorbent capacity of composite 60.

With respect to **Claim 31**: Mortell teaches a garment shell 64 including a front panel 22 defining a front waist region 38, a back panel 24 defining a back waist region 39 and an inner absorbent assembly. The front waist region and back waist region are connected via seams to define a waist opening and at least one leg opening. Garment shell 64 has waist elastic member 58 (elasticized shell waistband) adapted to encircle the wearer and said shell defines a body-side surface and an outward surface. The inner

absorbent assembly comprises an absorbent composite 60 defining a front region and a back region. Mortell teaches that the absorbent structure 60 can be in various forms, e.g. in the form of a training pant, thus teaching an elastic support waistband defining a front section and a back waist section. The absorbent structure front end (and thus the elasticized support waistband) is attached (i.e. connected) to the garment shell at front waist edge 38 of front region 22 and the structure's back end is attached back waist edge 39 by any suitable means known in the art, e.g. straps. Mortell does not explicitly teach at least one posterior strap connecting the elastic support waistband to the absorbent structure, as they are unitary.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie J. Hand whose telephone number is 571-272-6464. The examiner can normally be reached on Mon-Thurs 8:00-5:30, alternate Fridays 8:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tatyana Zalukaeva can be reached on 571-272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie J Hand  
Examiner  
Art Unit 3761

TATYANA ZALUKAEVA  
SUPERVISORY PRIMARY EXAMINER

